telecommunications. NPRM ¶¶ 41-46. As the Commission has noted, "[o]nce solely a business tool, wireless phones are now a mass-market consumer device." 118/ As revealed by the independent study commissioned by ATA, fewer than 15 percent of the respondents own wireless phones report ever having been called by a telemarketer on their wireless phone. See Exhibit 12. The Commission's current rules have worked thus far, but the extent and manner to which they single out wireless telecommunications is becoming **less** tenable.

1. Legal, Marketplace and Technological Changes

Much has changed in the teleservices sphere with respect to wireless communications since Congress enacted the TCPA in 1991. When Congress enacted that legislation, it was still two years from passing the Omnibus Budget Reconciliation Act of 1993, which created a new "Commercial Mobile Services" statutory classification to promote consistent regulation of wireless services, and the market-opening provisions of the Telecommunications Act of 1996 were still nearly five years away. See Pub. L. No. 103-66, Title **VI,** § 6002(b), codified at 47 U.S.C. § 332(c); Pub. L. No. 104-104, 110 Stat. 56 (1996). It is thus not surprising that the TCPA did not provide more meaningful treatment of wireless telephones. Indeed, even four years after the TCPAs enactment, when the Commission issued its first CMRS Report, it noted "no

118/ See Implementation *of* Section *6002(b) of* the Omnibus Budget Reconciliation Act *of 1993;* Annual Report and Analysis *of* Competitive Market Conditions With Respect to Mobile Services, 17 FCC Rcd 12985, 13016 (2002) ("2002 CMRS Competition *Report*").

one predicted [cellular] service would be as popular as it has become." 119/ As late as 1995, three years after adopting rules implementing the TCPA, the Commission had only recently allocated spectrum for the personal communications service ("PCS"), which had yet to commence service, id. at 8859 and specialized mobile radio service ("SMR) had yet to evolve very far from a private wireless service to being a commercial mobile radio service ("CMRS") offering. Id. at 8855-57. At the time, the Commission expected cellular service to reach 20 percent penetration by 2000. Id. at 8848, ¶ 13. Today, overall wireless penetration is more than twice that, at 45 percent, and it is possible that as much as nearly two thirds of U.S. households have at least one wireless phone. 2002 CMRS Competition Report, 17 FCC Rcd at 13013.

It was against this backdrop that Congress encouraged, and the FCC adopted, rules and policies facilitating competition between wireline and wireless services. 120/ Such competition among CMRS providers and between wireless and wireline services advances the public interest by spurring carriers to provide better,

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119/ Implementation of Section *6002(b) of* the Omnibus Budget Reconciliation Act of *1993;* Annual Report and Analysis of Competitive Market Conditions With Respect *to* Mobile Services, 10 FCC Rcd 8844, 8845 (1995). Notably, this conclusion about the popularity of wireless was based on a mere 10 percent cellular penetration rate. Id.

120/ See, *e.g.*, Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, 17 FCC Rcd 14972, 14973 (2002) (citing Telephone Number Portability, 11 FCC Rcd 8352, 8434-36 (1996)); Amendment *of* the Commission's Rules *to Permit* Flexible Service Offerings in the Commercial Mobile Radio Services, 11 FCC Rcd 2445 (1996) (proposing rules to "increase competition within wireless services and promote competition between wireless and wireline services"); Amendment of the Commission's Rules *to* Permit Flexible Service Offerings in the Commercial Mobile Radio Services, 11 FCC Rcd 8965, 8967-69.

more varied services that cater to consumer needs at lower prices. 121/ It also tends to render distinctions between wireline and CMRS offerings (other than the fact that one is delivered by wire and the other by radio) quite a bit less meaningful. Establishment of a similarly-regulated class of CMRS offerings, and the promotion of competition between them, played a key role in the explosion of wireless services leading to the robust market that exists today. See, *e.g.*, 2002 CMRS Competition Report, 17 FCC Rcd at 12987 (2002) ("Congress established the promotion of competition as a fundamental goal for CMRS policy formation and regulation"); id. at 12989 (reporting that "the CMRS industry continued to experience increased competition, innovation, [and] lower prices for consumers").

Increasing competitiveness among wireless providers, and in the telecommunications industry generally, resulted in significant changes in the nature and pricing of wireless services. Wireless calling plans have evolved to provide a "bucket" of minutes for a fixed fee rather than charging customers for usage on a per-minute basis. See NPRM ¶ 42. Some carriers even allow their customers to carry over unused minutes from month to month. 122/ Such pricing is designed to emulate – and compete with – wireline price structures, which historically permit unlimited local calling for a

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121/ See, *e.g.*, Federal-State Joint Board on Universal Service; Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier In *the* State of Wyoming, 16 FCC Rcd 19144, 191151-52 (2001) (finding that facilitating competitive entry by wireless carriers into local exchange market "promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies").

122/ See http://www.cinqular.com/buy/buy default

fixed monthly fee. Wireless providers even began to one-up local wireline providers by allowing unlimited use of calling plan minutes for long distance services. 123/

The growing flexibility and cost-effectiveness of wireless offerings, and the convenience of mobility that wireless phones allow, have lead a significant number of telephone subscribers to rely on wireless phones for their primary telephone service, NPRM ¶ 42 (20 percent of mobile telephony users regard their wireless phone as their primary phone), and some have even ceased taking service from wireline carriers. 2002 *CMRS Report*, 17 FCC Rcd at 13017 ("3 to 5 percent of wireless customers use their wireless phones as their only phone"). The Commission reports that "[s]everal local carriers have attributed declining access line growth in part to substitution by wireless," and "[o]ne study estimated that by the end of 2001, wireless had displaced ten million access lines, primarily by consumers choosing wireless [instead]." *Id.*

The growth of wireless services has had ripple effects in other areas as well. For example, it is already all but impossible to distinguish between wireline and wireless telephone numbers. Moreover, it will become even more difficult to distinguish wireless and wireline telephone numbers once the FCC's number portability rules, which allow customers to keep their phone numbers when changing service providers and already apply to wireline providers, take effect for wireless carriers as well. See

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123/ See, *e.g.*, http://www.sprintDcs.com (offering calling plans with "nationwide long distance included); http://www.attws.com/personal/ps/national dor ovw.jhtml (offering "national network with "no roaming or long distance charges"); http://www.cinaular.com (advertising calling plans with "no long distance charges"); http://www.verizonwireless.com/ics/plsql/customize.intro?p_section=PLANS_PRICING (offering "America's Choice" plan with "no roaming or long distance charges" and "National SingleRate" with "domestic roaming and domestic long distance included).

NPRM ¶ 46 & n.166. The advent of wireless number portability will be particularly confusing under the current TCPA rules in that it will allow telephone subscribers to keep the same telephone number even when transitioning from wireline to wireless service (or back). *Id.* In addition, features such **as** call-forwarding now play a significant role in how consumers use wireless services. Telephone subscribers to wireline services can use call forwarding service to automatically transfer calls from their wireline phone number to their wireless phone, and Caller ID has become a standard feature on most wireless offerings. 124/ The evolution of these features has greatly changed the dynamics of wireless phone use, including encouraging some telephone subscribers to make the switch to wireless as their primary or only telephone service.

Meanwhile, as wireless services were maturing, teleservices technologies and practices evolved to improve the likelihood of reaching consumers with an actual interest in the goods or services offered in any given telephone solicitation, and to decrease instances of spurious, fruitless calls. As described in greater detail above, predictive dialers automate the dialing and timing of calls to numbers pre-selected by the equipment operator, and as such are not automatic dialers that merely generate calls to random or sequential phone numbers. See ***supra,*** Section IV.E.3.

124/ See http://wl.sprintpcs.com/explore/coverage/NewZipCode.jsp; http://www.t-mobile.com/plans/national/?blnOverride=False ("All plans include . . . Caller ID); http://onlinestore.cingular.com/webapp/wcs/stores/servlet/ES_PROD_RATE?storeAlias=waswas&storeId=11351&catalogId=11351&langId=-1&svcAreaId=null&ratePlanType=NationPreferred (all plans listed feature caller ID).

The combined force of these regulatory changes, marketplace dynamics and technological advances has created a teleservices landscape very different from what existed at the time Congress enacted the TCPA. That much is clear not just from the changes outlined above, but from the TCPA itself. It is clearly a wireline-centric statute that largely applies to "telephone lines." See, *e.g.*, 47 U.S.C. § 227(b)(1)(B) (prohibiting use of autodialers to call "any residential telephone line"); id. § 227(a)(2) (defining "facsimile machines" in terms of transmitting signals over a "regular telephone line") (emphases added). It also is tethered to a period in time when paging, cellular and other similar wireless services were considered "radio common carrier service . . . for which the called party is charged for the call." *Id.* § 227(b)(1)(A)(iii). Moreover, it relies on a distinction between "radio common carrier service" and "telephone lines" that holds diminished meaning in the face of a growing substitutability between wireless and wireline services.

2. Necessary Revisions to the TCPA Rules

The Commission should take action in this proceeding to ensure that its TCPA rules do not unjustifiably differentiate between wireless and wireline telephones when the regulatory regime and market for those telecommunications services are both moving away from such distinctions. 125/ Consumers who rely primarily or exclusively

125/ The removal of telephone numbers assigned to cellular, PSC and SMR phones from the prohibition in Section 227(b)(1)(A)(iii) on calls to services for which the called party is charged for the call will not result in a sudden increase in teleservices calls to wireless phones. Just as teleservices providers are unlikely to know when they are calling a wireless phone for purposes of complying with the existing rule, they are equally unlikely to be able to target wireless phones for telemarketing. *Cf.* ATA Survey, Ex. 12 (12 percent of respondents have received calls on wireless phones).

on wireless phones should be empowered to enjoy the advantages of teleservices, and beneficial teleservice efforts should have access to such telephone subscribers. The only way this will occur, however, is for the FCC to adopt clear rules and polices that protect consumers, set unambiguous boundaries on telephone solicitation, and allow fair and predictable Commission enforcement against telemarketing abuses.

a. The Commission Should Find that Predictive Dialers Do Not Fall Within the Definition of "Automatic Telephone Dialing System" or "Autodialer" From Which Calls to Wireless Phones Are Prohibited

The most direct way for the Commission to rationalize its application of the TCPA to wireless telephones is to clarify, as described above, that predictive dialers are not automatic telephone dialing systems or autodialers that the TCPA prohibits businesses from using to call wireless telephone subscribers. As noted, predictive dialers clearly do not meet the statutory definition of "automatic telephone dialing system" as they do not merely generate "random" or "sequential" telephone numbers, but rather rely upon complex algorithms to dial user-provided telephone numbers. See ***supra*** Section IV.E.1. Predictive dialers thus lack the function of selecting numbers to call, which is the operative definition of automated telephone dialing systems. ***Id.*** The Commission should therefore clarify that predictive dialers do not fall within TCPAs automatic dialing system prohibitions, including those to telephone numbers assigned to CMRS providers.

b. The Commission Should Exercise the Exemption for Calls to Cellular Telephones for which the Called Party is Not Charged and Apply it to All CMRS Providers

The Commission also can achieve the objective of placing wireline and wireless telephones on equal footing with respect to teleservices through an alternative analysis that parallels the converging regulatory treatment, marketing and utilization of wireline and wireless services. Specifically, the FCC can exercise its authority under Section 227(b)(2)(C) to exempt calls to cellular phones that are not charged to the called party from the prohibition in Section 227(b)(1)(A)(iii) on calls to cellular telephones by autodialers. See NPRM ¶ 45. In conjunction with the exercise of this authority, the Commission can extend the exemption to other CMRS phones either by interpreting Section 227(b)(2)(C) as applying to all radio common carrier services similar to cellular (*i.e.*, PCS and SMR), or by exercising forbearance authority under Section 10 of the Act. 47 U.S.C. § 160. This approach to clarifying that the autodialer prohibition does not apply to predictive dialer calls to wireless phones holds up even under a finding that predictive dialers are "automatic telephone dialing systems" notwithstanding that they are not used for generating or dialing random or sequential numbers. This approach is also consistent with market expectations that make little distinction between cellular and similar CMRS offerings. See 2000 Biennial *Regulatory* Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, 16 FCC Rcd 22668, 22707-08 (2001) ("cellular carriers no longer possess market power [as]

the services offered by cellular and broadband PCS providers . . . are indistinguishable to consumers").

The TCPA allows the Commission "by rule or order, [to] exempt from the requirements of [Section 227(b)(1)(A)(iii)] calls to a telephone number assigned to a cellular telephone service that are not charged to the called party[.]" 47 U.S.C. § 227(b)(2)(C). As discussed above, changes in the wireless industry have lead to calling plans under which no individual incoming call, including a potential telephone solicitation, is "charged to the called party" on a per-call or per-minute basis, as was predominantly the case at the time of TCPAs enactment. Instead, wireless telephone subscribers purchase monthly buckets of minutes, which are often accompanied by unlimited usage during certain times of the day, carry-over of unused minutes from month to month, and Caller ID service.

As a result, wireless telephone pricing and usage is now much more akin to that for wireline services, where subscribers pay a flat fee per month for usage, than it was at the time of TCPAs enactment. 126/ The pricing of calls to wireline and wireless phones are thus now sufficiently similar – as evidenced by the significant inroads CMRS providers have made in becoming some subscribers' primary or sole telephone service 127/ – that there is ample support to conclude that calls to cellular

126/ It is of little import that it is possible to calculate a per-minute charge for any given subscriber's monthly wireless usage based on the flat rate for that month – the same calculation could be made for wireline phones, yet there is no perception that calls to wireline phones are "charged to the called party."

127/ *See supra* at 125 (citing 2002 *CMRS Report,* 17 FCC Rcd at 13017).

telephones are not "charged to the called party" as contemplated by the TCPAs restriction on autodialed calls.

Once the Commission reaches that conclusion, it should apply to all telephone numbers assigned to CMRS providers that typically offer buckets or bundles of minutes at a flat monthly rate, including not just cellular service, but PCS and SMR as well. As the Commission noted in the 2002 *CMRS Competition Report,* "providers using cellular radiotelephone, broadband PCS, and SMR licenses dominate" the wireless market and "are essentially interchangeable, or at least close substitutes, from the perspective of most consumers." 17 FCC Rcd at 12993. There are two separate rationales for treating PCS and SMR identically to cellular for purposes of the autodialer prohibition. First, though Section 227(b)(2)(C) expressly authorizes the Commission to grant exceptions to the prohibition on autodialer calls for only "cellular telephone service," it is clear the TCPA equates cellular with similar wireless services. The prohibition on autodialer calls to wireless phones to which Section 227(b)(2)(C) provides an exception applies not only to cellular, but to SMR, "other radio common carrier service, and any other service for which the called party is charged for the call." 47 U.S.C. § 227(b)(1)(A)(iii). Thus, both the rule and the provision allowing exemptions to it turn on whether the called party is charged for incoming calls. To the extent the Commission finds that this is no longer the case for cellular for purposes of the autodialer rules, it should do the same for all similar CMRS offerings. Such an approach consistent not only with the clear intent behind the autodialer prohibition and

exemption, but with the regulatory parity the Commission has come to apply to similarly situated wireless services. 128/

Alternatively, should the Commission feel constrained by the language of Section 227(b)(2)(C) to exclude PCS and SMR from the autodialer exemption provided for telephone numbers assigned to cellular telephone service, it could nevertheless decline to apply the prohibition to telephone numbers assigned to other wireless offerings under the forbearance provisions in Section 10 of the Act. 47 U.S.C. § 160. Specifically, Section 10 permits the FCC to forbear from applying any provision of the Act to, inter alia, any class of telecommunications services if it finds that:

- enforcement of the provision is not necessary to ensure that charges, practices, classifications or regulations in connection with the telecommunications service are just and reasonable and are not unjustly and unreasonably discriminatory;
- enforcement of the provision is not necessary for the protection of consumers; and
- forbearance from applying the provision is in the public interest.

Id. § 160(a). If the Commission exempts predictive dialer calls from the prohibition on autodialer calls to cellular telephones under Section 227(b)(2)(C), forbearance from applying the prohibition to similar wireless services would satisfy each of these criteria.

First, neither Congress nor the Commission made any finding, nor is it the case, that the prohibition in Section 227(b) on autodialer calls to radio common carrier phones for which the called party is charged impacts the charges, practices or

128/ See, *e.g.* Year 2000 Biennial Regulatory Review - Amendment of *Part 22* of the Commission's Rules *to* Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, 17 FCC Rcd 18401, 18412-13 (2002).

classification of any wireless telecommunications service, nor are they necessary to ensure that such services are provided in a just, reasonable and non-discriminatory manner. 129/ Second, if the Commission finds that the pricing and use of cellular services justifies exempting predictive dialer calls to cellular telephones from the autodialer prohibition in Section 227(b)(2)(C), there can be no argument that enforcing the prohibition for similarly priced and utilized PCS and SMR telephones is necessary to protect consumers. Finally, forbearing from applying the autodialer prohibition to predictive dialer calls to non-cellular CMRS subscribers would serve the public interest by allowing CMRS subscribers to enjoy the benefits of teleservices offerings and by providing clear rules for the teleservices industry and FCC enforcement efforts, as discussed above.

c. The Commission Should Provide a Safe Harbor for Inadvertent Unsolicited Teleservice Calls to Wireless Phones

Should the Commission reject the above reforms, or implement them in a manner that leaves open possible liability from predictive dialer calls to CMRS subscribers, the Commission should clarify its rules to preclude liability for teleservices calls that inadvertently reach a wireless phone. As noted above, an increasing number

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129/ The regulation of charges, practices, classification or rules for a service, and the requirement to provide it in a just, reasonable and non-discriminatory manner, has little application to the provision of teleservices, but rather is typically relevant only in the context of common carrier services. Amendment *of* Section *64.702 of* the Commission's Rules and Regulations (Second Computer Inquiry), 84 F.C.C.2d 50, 93 (1980). However, applying the exemption to the autodialer prohibition to all CMRS offerings, rather than just the cellular telephone service specified in Section 227(b)(2)(C), ensures that no class of CMRS subscribers, *i.e.*, cellular customers, will enjoy different treatment from other classes such as PSC and SMR carriers.

of people use cellular, PCS or SMR service as their primary or only telephone, or automatically forward incoming calls from landlines to their wireless phone. Thus, teleservices providers are unlikely to know when they are calling a wireless phone and could unintentionally run afoul of the rule. Unless and until teleservices providers (and by extension their agents and employees) know that a given number is assigned to a wireless telephone, there is no justification for imposing liability. Such liability would only serve to penalize legitimate teleservices providers even where there is no reason to know that a given number is assigned to – or reaches – a wireless telephone subscriber.

The Commission should adopt a rule protecting otherwise compliant telephone solicitations who inadvertently reach wireless phones. 130/ In adopting and enforcing this rule, the Commission should specify that persons initiating predictive dialer calls that reach wireless phones cannot be charged with knowledge that the telephone number is assigned to a prohibited wireless phone unless one of two conditions are met. Liability should attach only where (i) the number itself, based on conventions accepted and applied in the industry, make clear that it is assigned to a wireless phone, or (ii) the subscriber has previously informed the caller that the number is assigned to a wireless phone.

130/ Specifically, the Commission should amend Section 64.1200(a)(1)(iii) to add the following underscored language: (iii) To any telephone number assigned to a paging service, cellular mobile telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call, except that calls made to such telephone numbers shall not be deemed a violation of this subsection unless the person initiating the telephone call knew, or should have known. at the time of the call that the telephone number is assigned to such radio common carrier or other service for which the party is charged for the call;

These revisions are consistent with the observation that an increasing number of telephone subscribers use wireless service for their primary telephone, NPRM ¶ 42, in that they parallel the approach for telephone solicitations for wireline phones under the Commission's rules and the Act. For such telephone solicitations, the obligation not to call attaches only once it is known that such calls are unwelcome, *i.e.*, the subscriber asks to be placed on the callers do not call list. See 47 C.F.R. § 64.1200(e)(2). Moreover, under the Act, a cause of action accrues only where the telephone subscriber receives more than one telephone call within any twelve-month period on behalf of the same entity in violation of the FCC's rules. 47 U.S.C. § 227(c)(5). In other words, the rules require the telephone subscriber to put telemarketers on notice that his or her number is off-limits, and the Act allows for isolated, inadvertent violations of the telephone solicitation prohibition. The same should hold true for unintentional calls to wireless telephones given their prevalence and increasing use and substitutability for wireline service. The Commission should thus adopt the amendment to its rules set forth above to grant safe harbor for predictive dialer calls that inadvertently reach wireless phones

G. The Commission Should Extend Its Informal Complaint Rules to Telemarketing Complaints

ATA supports amendment of the FCC's informal complaint rules so that they apply to the TCPA regulations in 47 C.F.R. § 1200. The surest way to "establish a unified, streamlined process" that avoids "requir[ing] consumers to navigate an array of rule provisions and disparate procedures . . . in order to file complaints," *Informal Complaints NPRM*, 17 FCC Rcd at 3919, is to provide as much uniformity as possible.

This means bringing as many potential complaints under the auspices of the same procedural rules as is feasible. Such uniformity is particularly important with respect to complaints that consumers are more likely to lodge themselves rather than seeking counsel or other outside assistance. Telemarketing complaints clearly fall in this category, as evidenced by the consumer complaints the Commission acknowledged in commencing this proceeding, ***see*** NPRM ¶ **8,** and the thousands of submissions in this docket by individuals.

A streamlined, straightforward complaint process is also important to potential respondents to consumer complaints. This is particularly true with respect **to** the non-common carriers to which the Commission is considering extending its informal complaint rules in the *Informal Complaints NPRM,* as such entities may well not hold Commission licenses or authorizations. Such is the case with teleservices providers. Unlike common carriers whose rates, terms and conditions may be subject to ongoing Commission regulation, teleservices providers typically have limited experience with the FCC regulatory process, and in fact will likely deal directly the Commission only in response to telemarketing complaints.

Making telemarketing complaints subject to the FCC's informal complaint process will provide additional benefits that may help expedite resolution of consumer concerns as well. Presently, consumers are not required to serve or otherwise notify teleservices providers who are the subject of complaints. If teleservices were placed on notice as to potential transgressions, they may be able to provide information demonstrating the absence of a violation of the Commission's rules, or an innocuous

explanation for the activity that gave rise to the consumer's concern. This will preserve the Commission's resources by assuring a response by the telemarketer rather than putting the onus on the Commission to pursue a response, and it will likely provide closure for the consumer much more often and more expeditiously than the current regime. 131/

Extending the FCC informal complaint to include telemarketing issues would further support telemarketers' efforts to comply with the rules. If a telemarketer has inadvertently fallen out of compliance with the Commission's rules, receipt of a consumer complaint will bring the noncomplying activity to the telemarketer's attention much more quickly. The current consumer complaint process, under which a potentially offending telemarketer has no knowledge of the complaint unless the Commission pursues it, leaves the telemarketer in the dark. A requirement that the telemarketer receive the complaint, however, can help limit the duration of the non-compliant behavior and thereby reduce the number of consumers who are subject to inadvertent violations of the Commission's telemarketing rules.

Finally, ATA submits that there is no need for the FCC to "clarify whether a consumer may file suit after receiving one call from a telemarketer who . . . fails to properly identify himself or makes a call outside the time of day restrictions." See

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131/ *Cf.* Telecommunications Relay Services and Speech-To-Speech Services for *Individuals* With Hearing and Speech Disabilities, 15 FCC Rcd 5140, 5189 n.241 ("in administering our rules pertaining to informal complaints . . . under section 208 of the Act, Commission staff works cooperatively with consumers and companies to promote meaningful solutions to problems raised by consumers and to address underlying compliance concerns [and] routinely meets with consumer groups and company representatives to evaluate the effectiveness of the process and explore improvements that will better serve the needs of consumers and the industry").

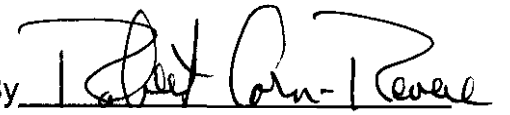
NPRM ¶ 47. The question suggests that, though it is clear that a telemarketer is not liable for a rules violation unless and until it places a second call to a consumer despite his or her do-not-call request, there is still uncertainty whether the same "one free call" rule applies to the calling-party-identification and time-of-day rules. But the only reasonable interpretation of the TCPA is that it does not permit a cause of action for the first time a telemarketer violates the identification and time-of-day rules with respect to a given consumer. See 47 U.S.C. § 227(c)(5). The Commission has clearly interpreted Section 227(c)(5) as barring suit unless the consumer receives "more than one telephone call within any 12-month period by or on behalf of the same company in violation of the guidelines for making telephone solicitations," see NPRM at ¶ 47 (emphasis added), and the Act allows an action only for receipt of "more than one telephone call within any 12-moth period by or on behalf of the same entity in violation of the regulations prescribed under this subsection [227(c)]." See 47 U.S.C. § 227(c)(5) (emphasis added). It is clear that the "guidelines for making telephone solicitations" and "regulations prescribed under this subsection," referenced in the NPRM and Section 227 respectively include not only violations of the "do-not-call rule," but also the identification and time-of-day rules. This is reinforced by the fact that these requirements are part of the same rule as the "do-not-call'' prohibition, see 47 C.F.R. § 64.1200(e), and that all three were adopted under the Section 227(c). See ***TCPA*** Report & Order, Section lll.B.2 ("Alternatives to Restrict Telephone Solicitations to Residences"), 7 FCC Rcd at 8758-68. The rule therefore applies to the identification requirement and time-of-day restriction the same way it applies to the "do-not-call'' rule.

CONCLUSION

For the foregoing reasons, ATA respectfully submits that the Commission should retain the bulk of its existing rules under the TCPA, as described above. In particular, the FCC should retain its company-specific "do-not-call" requirement and reject the current proposal for a national "do-not-call" list. Otherwise, ATA suggests that certain rules should be modified. as set forth in these comments.

Respectfully submitted,

AMERICAN TELESERVICES ASSOCIATION

By 

Robert Corn-Revere
Ronald G. London
Paul A. Werner III
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5600
Counsel

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